

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FINJAN SOFTWARE, LTD., an Israel)	
corporation,)	
)	
Plaintiff-counterdefendants,)	Civil Action No. 06-00369-GMS
)	
v.)	
)	
SECURE COMPUTING CORPORATION, a)	
Delaware corporation; CYBERGUARD)	
CORPORATION, a Delaware corporation,)	
WEBWASHER AG, a German corporation and)	
DOES 1 THROUGH 100,)	
)	
Defendants-counterclaimants.)	

**DEFENDANTS-COUNTERCLAIMANTS' ANSWERING BRIEF IN OPPOSITION TO
FINJAN'S MOTION TO AMEND JUDGMENT AND FOR AN ACCOUNTING OF SALES**

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Dated: May 9, 2008

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
NATURE OF THE PROCEEDINGS AND BACKGROUND	1
STAGE OF THE PROCEEDINGS	2
ARGUMENT	3
I. THE COURT SHOULD DENY FINJAN’S REQUEST FOR AN ACCOUNTING	3
A. Finjan Waived Its Right To Request An Accounting	3
B. Secure Would Be Unfairly Prejudiced By Finjan’s Use of a Jury- Determined Royalty Rate For Determining Damages Beyond What Was Presented At Trial	5
C. Secure Complied With Its Discovery Obligations.....	7
II. IF THE COURT GRANTS PREJUDGMENT INTEREST ON THE COMPENSATORY AWARD, THE ONE-YEAR TREASURY CONSTANT MATURITY RATE, COMPOUNDED ANNUALLY, IS AN APPROPRIATE PREJUDGMENT INTEREST RATE.....	8
III. SECURE DOES NOT OBJECT TO FINJAN’S REQUEST FOR POSTJUDGMENT INTEREST	11
CONCLUSION.....	11

TABLE OF AUTHORITIES

	Page
Cases	
<i>Bowling v. Hasbro, Inc.</i> , 2008 U.S. Dist. LEXIS 30043, (D. R.I. March 17, 2008)	7
<i>Crystal Semiconductor Corp. v. Tritech Microelectronics Int'l, Inc.</i> , 246 F.3d 1336 (Fed. Cir. 2001)	9
<i>Datascope Corp. v. SMEC, Inc.</i> , 879 F.2d 820 (Fed. Cir. 1989)	19
<i>Eolas Techs. Inc. v. Microsoft Corp.</i> , 2004 U.S. Dist. LEXIS 534, (N.D. Ill. Jan. 14, 2004), <i>rev'd on other grounds</i> , 399 F.3d 1325 (Fed. Cir. 2005)	10
<i>General Motors Corp. v. Devex Corp.</i> , 461 U.S. 648 (1983)	8
<i>Laitram Corp. v. NEC Corp.</i> , 115 F.3d 947 (Fed. Cir. 1997)	9, 10
<i>Lucent Techs., Inc. v. Newbridge Networks Corp.</i> , 168 F. Supp. 2d 269 (D. Del. 2001)	3, 4, 5
<i>Oscar Mayer Foods Corp. v. Conagra, Inc.</i> , 869 F. Supp. 656 (W.D. Wis. 1994)	6
<i>Phillips Petroleum Co. v. Rexene Corp.</i> , 1997 U.S. Dist. LEXIS 18460, (D. Del. Sept. 4, 1997)	9
<i>Schering Corp. v. Precision-Cosmet Co.</i> , 614 F. Supp. 1368 (D. Del. 1985)	9, 10
<i>Tristrata Tech., Inc. v. ICN Pharm., Inc.</i> , 2004 U.S. Dist. LEXIS 6559 (D. Del. Apr. 7, 2004)	3, 4, 5
Statutes	
28 U.S.C. § 1292(c)(2)	8
28 U.S.C. § 1961	9, 11
35 U.S.C. § 284	6
Fed. R. Civ. P. 50	3

Fed. R. Civ. P. 50(b)	3
Fed. R. Civ. P. 59	3
Fed. R. Civ. P. 59(e)	4

INTRODUCTION

Finjan Software, Ltd.'s ("Finjan") motion for an accounting should be denied because: (1) Finjan waived its right to request an accounting; (2) Defendants-counterclaimants Secure Computing Corporation, Cyberguard Corporation, and Webwasher AG ("Secure") would be unfairly prejudiced by the application of the jury-determined royalty rate to additional sales not presented at trial by Finjan; and (3) Secure complied with its discovery obligations. On its face, Finjan's motion should be denied because of waiver – Finjan did not request an accounting in the Final Joint Pretrial Order or its Complaint or Amended Complaint. In this Court, that is a clear waiver.

If the Court grants prejudgment interest, the appropriate rate is the one-year Treasury Constant Maturity Rate, compounded yearly, because Finjan has not affirmatively demonstrated that Finjan has in the past borrowed money at the prime rate in order to maintain its operations and Secure's financial position justifies a rate lower than the prime rate.

NATURE OF THE PROCEEDINGS AND BACKGROUND

This action involves allegations of infringement relating to five United States Patents. The relevant facts for this motion are contained in trial transcripts (*See* D.I. 227-234) (cited to herein as "(Tr. at page:line (D.I.))" and the trial exhibits from the eight-day trial, as well as the facts presented in Secure's opening brief in support of its post-trial motions (D.I. 266), and the various pleadings and discovery materials in this case.

Finjan asserts that Secure's Webwasher product and Cyberguard TSP product infringe claims 1-4, 24-30, 32-36 and 65 of the '194 Patent, claims 1-6, 9-14 and 18 of the '780 Patent, and claims 4, 6, 8, 12 and 13 of the '822 Patent.¹ At trial, Secure asserted several substantial defenses,

¹ In its post-trial motions, Secure asserts that the jury should have found that Finjan's Vital Security products infringe claims 1-5, 7-12 and 14-15 of Secure's '361 Patent.

including non-infringement and invalidity of Finjan's Patents.

STAGE OF THE PROCEEDINGS

This case was tried to a jury from March 3-11, 2008. (D.I. 227-233.) The jury was asked to assess the amount of damages, if any, that Finjan was entitled to receive. Specifically, in the Joint Special Verdict Form (D.I. 220, 226), the jury was asked:

Webwasher Software

If you have found that one or more of the asserted claims of U.S. Patent No. 6,092,194, U.S. Patent No. 6,804,780, and/or U.S. Patent No. 7,058,822 are valid and infringed by Secure Computing's Webwasher Software, then what is the reasonable royalty rate to which Finjan Software has proven by a preponderance of the evidence and the amount of sales of the Webwasher Software that the royalty rate should be applied to?

_____ % \$ _____

Webwasher Hardware Appliances

If you have found that one or more of the asserted claims of U.S. Patent No. 6,092,194, U.S. Patent No. 6,804,780, and/or U.S. Patent No. 7,058,822 are valid and infringed by Secure Computing's Webwasher Hardware Appliances, then what is the reasonable royalty rate to which Finjan Software has proven by a preponderance of the evidence and the amount of sales of the Webwasher Hardware Appliances that the royalty rate should be applied to?

_____ % \$ _____

Cyberguard TSP Hardware Appliances

If you have found that one or more of the asserted claims of U.S. Patent No. 6,092,194, U.S. Patent No. 6,804,780, and/or U.S. Patent No. 7,058,822 are valid and infringed by Secure Computing's Cyberguard TSP Hardware Appliances, then what is the reasonable royalty rate to which Finjan Software has proven by a preponderance of the evidence and the amount of sales of the Cyberguard TSP Hardware Appliances that the royalty rate should be applied to?

_____ % \$ _____

On March 12, 2008, in response to these questions, the jury answered: 16% applied to \$49,000,000 in sales of Webwasher Software; 8% applied to \$3,250,000 in sales of Webwasher Hardware Appliances, and 16% applied to \$13,500,000 in sales of Cyberguard TSP Hardware

Appliances.² (D.I. 226, 242; *see also* Tr. at 1671:12-1678:25 (D.I. 234).) On March 28, 2008, the Court entered Judgment in favor of Finjan, for monetary damages. (D.I. 242.) On March 27, 2008, after the verdict and prior to the entry of judgment, Secure timely moved for JMOL, pursuant to Fed. R. Civ. P. 50(b), and in the alternative, moved for a new trial and/or remittitur. (D.I. 240.) On April 11, 2008, following the Court's entry of judgment on the verdict, Secure timely filed an amended motion under Rule 50, for JMOL, and under Rule 59, for a new trial or to alter or amend the judgment (remittitur). (D.I. 253.)

ARGUMENT

I. THE COURT SHOULD DENY FINJAN'S REQUEST FOR AN ACCOUNTING

A. Finjan Waived Its Right To Request An Accounting

In this Court, when a party fails to request an accounting in the Final Joint Pretrial Order or in its complaint, that party waives any ability to request an accounting and a post-trial request for accounting should be denied. *See Lucent Techs., Inc. v. Newbridge Networks Corp.*, 168 F. Supp. 2d 269, 271-73 (D. Del. 2001) (denying request for accounting because request was not in Amended Complaint or Final Pretrial Order); *Tristrata Tech., Inc. v. ICN Pharm., Inc.*, 2004 U.S. Dist. LEXIS 6559, at *3-6 (D. Del. Apr. 7, 2004) (denying request for accounting because request was not in the Final Pretrial Order). Here, Finjan waived its ability to seek an accounting because Finjan did not request an accounting in the Final Joint Pretrial Order, or its Complaint or Amended Complaint (*See* Finjan Ex. C; D.I. 170; D.I. 43; D.I. 1.)

The *Lucent* case is directly on point and mandates a denial of Finjan's motion for an accounting. In *Lucent*, a patent infringement plaintiff moved for an accounting, pursuant to Fed.

² Finjan inexplicably devotes attention to Secure's press releases following the jury's verdict. (Finjan Br. at 4-5 (D.I. 262).) On March 13, Secure made a press release that inadvertently stated that the jury found non-infringement of the '780 Patent. (Finjan Ex. G.) As soon as it was made aware of mistake, Secure corrected its press release. (Finjan Ex. H.) Finjan has shown no prejudice, nor would any prejudice be relevant to a motion for an accounting.

R. Civ. P. 59(e), arguing that “courts routinely order accountings to update a jury’s damages award to the time of final judgment.” 168 F. Supp. 2d at 271-72. This Court denied the plaintiff’s request for an accounting because of the plaintiff’s “failure to preserve its request for an accounting in either the Amended Complaint or the Final Joint Pre-Trial Order.” *Id.* at 273. Likewise, in *Tristrata*, this Court denied a patent infringement plaintiff’s request for an accounting after the plaintiff failed to include a request for an accounting in the Final Pretrial Order. 2004 U.S. Dist. LEXIS 6559, at *3-6. The plaintiff argued that an accounting was necessary because it did not have all relevant sales data at trial and its expert testified that he was unable to include all infringing sales in his opinion. *Id.* The Court rejected this argument, stating that if the plaintiff “believed that the jury had insufficient information by which to return a non-speculative award including these damages, the Court would have expected [plaintiff] to have requested an accounting of these sales in its Pretrial Order” *Id.* at *5. Therefore, the Court denied the plaintiff’s motion for an accounting because it “waived its right to request an accounting by not including it in its Pretrial Order.” *Id.* at *6. Here, like the plaintiff in *Lucent*, Finjan argues that it is “standard practice” to order accountings to update a jury’s damages award to the time of final judgment. Further, like the plaintiff in *Tristrata*, Finjan argues that an accounting is necessary because it allegedly did not have all relevant sales data at trial and its expert testified that he was unable to include all infringing sales in his opinion. Like the Court in *Lucent* and *Tristrata*, this Court should deny Finjan’s request for an accounting because of Finjan failed to preserve its request for an accounting in either the Complaint, the Amended Complaint, or the Final Joint Pre-Trial Order.

Finjan concedes that it did not expressly request an accounting in its Complaint or Amended Complaint or in the Final Pretrial Order. Instead, Finjan argues that it made its request “in its Amended Complaint by requesting ‘[s]uch further and other relief as the Court and/or the

jury may deem proper and just’” and in its Trial Brief by requesting “other damages.” (Finjan Br. at 3-4 (D.I. 262).) Finjan cites no authority for the proposition that such requests satisfy the requirements in the District of Delaware. Indeed, such requests do not pass muster under *Lucent* or *Tristrata*. First, *Lucent* and *Tristrata* expressly hold that a request for accounting must be in either the complaint or Final Pretrial Order – a request in a Trial Brief does not satisfy this requirement. Second, in *Lucent*, the court expressly held that requests that “lack clarity” are not sufficient to preserve a request for accounting. 168 F. Supp. at 273. Finjan’s alleged request in its Amended Complaint does not pass the *Lucent* or *Tristrata* tests. In fact, in both *Lucent* and *Tristrata*, the plaintiffs made the same requests in their complaints that Finjan now relies on for its accounting request. (See Ex. 1 at 6 (*Tristrata* complaint requesting “such other and further relief as this Court may deem just and proper”); Ex. 2 at 13, Ex. 3 at 14 (*Lucent* complaints requesting “such other further relief as may be just and appropriate”).) These type of vague requests were not a basis for allowing an accounting in *Lucent* or *Tristrata*, and it should not be in this case either.

Finjan’s failure to expressly request an accounting (or even a request for “corresponding damages for a given period of time”) in its complaints or the Final Joint Pretrial Order waives its right to an accounting. The Court should not allow Finjan to skirt around this Court’s requirement that an accounting must be expressly requested in the complaint or Final Pretrial Order. The Court should deny Finjan’s motion for an amendment of the judgment and for an accounting based on waiver.

B. Secure Would Be Unfairly Prejudiced By Finjan’s Use of a Jury-Determined Royalty Rate For Determining Damages Beyond What Was Presented At Trial

If the Court determines that Finjan did not waive its request for an accounting, the Court should still deny Finjan’s request for an accounting because it would unfairly prejudice Secure.

Under Finjan's own theory, the jury was misled as to the actual number of Webwasher and Cyberguard TSP products Finjan is claiming in the royalty base. Finjan's damages expert Mr. Russell Parr did not consider a higher sales volume, which may have persuaded both the jury and the damages expert to lower the exorbitant royalty rates opined by Mr. Parr and found by the jury.

This case was tried to a jury. Finjan asked the jury to determine a royalty rate based on alleged infringing sales presented at trial. The only quantity of allegedly infringing sales Finjan put before the jury for which damages were sought were the sales that Mr. Parr presented. (Tr. at 581:22-683:20 (D.I. 229).) The jury was instructed to "determine the amount of damages, if any, to be awarded to Finjan for the infringement." (D.I. 225 at Jury Instruction No. 28.) The jury was also instructed that "[t]he amount of those damages must be adequate to compensate the patentee for infringement." (*Id.*) The Joint Special Verdict Form provided to the jury does not permit the Court or the parties to determine how the damages were calculated. (D.I. 220.) The jury determined shockingly high royalty rates of 16% for Webwasher Software and 8% for Webwasher Hardware Appliances and Cyberguard TSP Hardware Appliances. Now, Finjan would like the Court to apply the jury-determined rates to additional products sold both before³ and after the trial. Finjan methodology is flawed and unfair to Secure because the additional volume of sales could have lowered the jury-determined royalty rates. In a hypothetical negotiation analysis, volume discounts should be considered – that is, royalty rates should generally go down as the royalty base – or volume of licensed goods sold – increases. *See*

³ In addition, Finjan's request for an award of additional damages for sales before trial improperly invades the jury's province to determine damages and is an inappropriate use of 35 U.S.C. §284 to enhance damages. *See Oscar Mayer Foods Corp. v. Conagra, Inc.*, 869 F. Supp. 656, 668 (W.D. Wis. 1994)(denying accounting of pre-trial damages because it would "be an improper invasion of the jury's province to determine actual damages and an inappropriate use of 35 U.S.C. § 284 to enhance inadequate compensatory damages.")

Bowling v Hasbro, Inc., 2008 U.S. Dist. LEXIS 30043, at *21-22 (D.R.I. March 17, 2008)(excluding expert's reasonable royalty opinion because, among other things, he failed to consider volume discounts for royalty rates). Here, on one hand, Finjan had the jury consider a lower royalty base, thereby justifying higher royalty rates and, now, Finjan is attempting to take advantage of those high royalty rates and would like the Court to apply them to additional sales. Finjan's manipulation of the damages case naturally results in a much higher, but incorrect, damages award. And, as explained below, this is not Secure's doing – Secure has complied with its discovery obligations. The Court should deny Finjan's attempt to receive a higher damages award based on an improper and post-hoc accounting.

C. Secure Complied With Its Discovery Obligations

Secure has, at all times during this litigation, complied with its discovery obligations. Nothing about Secure's discovery conduct justifies an accounting. Finjan has not, and cannot, show that Secure refused to provide supplemental Webwasher sales data. Finjan never asked for such supplementation.⁴ Finjan's opening brief points to no letter or correspondence where Finjan requests supplemental Webwasher sales data. And, a request for such additional information at this late stage would be extremely untimely and improper.

Finjan's focus on Cyberguard TSP data is similarly flawed – Finjan never asked for such supplemental data after discovery.⁵ Further, Finjan's contention that Secure refused to produce Cyberguard TSP sales data after June 30, 2006 is false. In response to Finjan's document requests and interrogatories related to Cyberguard TSP sales data, Secure objected to Finjan's requests as overly broad, unduly burdensome, and irrelevant in that it sought information relating

⁴ Finjan has not supplemented its own document production.

⁵ As of December 31, 2007, Secure no longer takes orders for Cyberguard TSP Hardware Appliances. (Ex. 4 at 7-8.)

to “Cyberguard TSP.” (Finjan Exs. K (pp. 51-52) and L (pp. 36-37).) However, because Cyberguard with Webwasher was specifically accused, Secure agreed to produce sales information related to “Cyberguard TSP with Webwasher that it is able to locate after a reasonable search.” (*Id.*) Thereafter:

- Finjan never challenged Secure’s discovery responses concerning Cyberguard TSP
- Secure produced all responsive information related to Cyberguard TSP
- Finjan never requested a meet and confer regarding Secure’s discovery responses or production concerning Cyberguard TSP
- Finjan never moved to compel discovery regarding Cyberguard TSP

In short, there were no sales of Cyberguard TSP with Webwasher after June 30, 2006 and Secure is not withholding sales records from production - the sales simply did not occur. Despite Secure’s compliance with its discovery obligations concerning Cyberguard TSP, and Finjan’s silence during discovery concerning Cyberguard TSP, Finjan now comes to this Court accusing Secure of discovery misconduct in an attempt to obtain an accounting. Finjan’s accusations are wrong. Finjan’s motion for an accounting should be denied.⁶

II. IF THE COURT GRANTS PREJUDGMENT INTEREST ON ANY COMPENSATORY AWARD, THE ONE-YEAR TREASURY CONSTANT MATURITY RATE, COMPOUNDED ANNUALLY, IS AN APPROPRIATE PREJUDGMENT INTEREST RATE

Prejudgment interest in a patent case is awarded “where necessary to afford the plaintiff full compensation for the infringement,” but district courts have discretion to withhold a prejudgment interest award in various circumstances. *General Motors Corp. v. Devex Corp.*, 461

⁶ If the Court is inclined to grant Finjan’s motion for accounting, Secure respectfully submits that, due to the substantial issues presented in Secure’s post-trial motions and the complexity, expense, and uncertainty surrounding the completion of an accounting, the Court should defer any action on accounting until after any appeals in this case are concluded. *See* 28 U.S.C. § 1292(c)(2) (stating that the Federal Circuit “shall have exclusive jurisdiction of an appeal from a judgment in a civil action for patent infringement which . . . is final except for an accounting.”).

U.S. 648, 656 (1983) (stating that it does “not construe § 284 as requiring the award of prejudgment interest whenever infringement is found.”) Prejudgment interest may be denied if there is justification for withholding such an award. *Crystal Semiconductor Corp. v. Tritech Microelectronics Int'l, Inc.*, 246 F.3d 1336, 1346, 1361-62 (Fed. Cir. 2001)(affirming denial of prejudgment interest based on plaintiff’s litigation tactics). Therefore, this Court may withhold prejudgment interest.

If the Court awards prejudgment interest, a prejudgment interest rate based upon the Treasury Constant Maturity Rate, compounded annually, is appropriate. Many federal courts, including the Federal Circuit and the District of Delaware, have used or upheld prejudgment interest levels based upon U.S. Treasury rates, compounded annually. *See, e.g., Laitram Corp. v. NEC Corp.*, 115 F.3d 947, 955 (Fed. Cir. 1997); *Datascope Corp. v. SMEC, Inc.*, 879 F.2d 820, 829 (Fed. Cir. 1989); *Phillips Petroleum Co. v. Rexene Corp.*, 1997 U.S. Dist. LEXIS 18460, at *83 (D. Del. Sept. 4, 1997); *Schering Corp. v. Precision-Cosmet Co.*, 614 F. Supp. 1368, 1383-84 (D. Del. 1985).

In *Laitram*, the Federal Circuit affirmed the district court’s use of the U.S. Treasury bill rate, compounded annually, instead of the prime rate, because “there was no evidence that [plaintiff] borrowed money at a higher rate, what that rate was, or that there was a causal connection between any borrowing and the loss of the use of the money awarded as a result of [defendant’s] infringement.” 115 F.3d at 955. Likewise, in *Schering*, the District of Delaware applied the T-bill rate set forth in 28 U.S.C. § 1961, compounded annually, because the plaintiff did not affirmatively demonstrate that the plaintiff “borrowed money at or above the prime rate in order to continue its operations.” 614 F. Supp. at 1384. Like in *Laitram* and *Schering*, Finjan has presented no evidence that it has borrowed money at a higher rate than the T-bill, what that rate was, or that there was a causal connection between any borrowing and the loss of the use of

the money awarded as a result of Secure's alleged infringement. Finjan has simply not shown that it borrowed money at or above the prime rate in order to continue operations. Therefore, like in *Laitram* and *Schering*, the T-bill rate compounded annually is the only appropriate rate.

In addition, the alleged loss of use of money by Finjan also could be characterized as an unsecured loan to Secure. One court discussing this issue has stated that "[t]he argument against using the prime rate is that the prime rate is designed to compensate for financial risk (albeit the low risk of prime borrowers) associated with the possibility of non-payment by borrowers. Given [Defendant's] strong financial position, it presents a risk that is much more like that of federal governments making the Treasury Bill rate more appropriate." *Eolas Techs. Inc. v. Microsoft Corp.*, 2004 U.S. Dist. LEXIS 534, at *26-28 (N.D. Ill. Jan. 14, 2004), *rev'd on other grounds*, 399 F.3d 1325 (Fed. Cir. 2005). Assuming Finjan is entitled to prejudgment interest, that loan was risk free, given Secure's financial position, and therefore commands a low interest rate.

Even Finjan acknowledges Secure's healthy financial condition. (See Finjan Br. In Support Enhanced Damages at 18-19 (D.I. 264).) As Secure has consistently argued, Finjan should not be allowed to use Secure's financial position as a shield and a sword. For example, in opposition to Secure's motion to stay enforcement of the judgment (D.I. 247), Finjan disparaged Secure's financial position. (Finjan Opposition at p. 3-7 (D.I. 251).) Then, in support its motion for enhanced damages, Finjan wants to use Secure's healthy financial position to obtain treble damages. Now, in response to this brief, Finjan will likely reply that Secure's financial position does not justify a low prejudgment interest rate. Finjan cannot have it both ways. Secure's financial position justifies the use of the Treasury Constant Maturity Rate. Finjan can provide no evidence that Secure's financial position put it at risk greater than warranted by the one-year Treasury Constant Maturity Rate.

If the Court awards prejudgment interest, the interest rate should be at the one-year Treasury Constant Maturity Rate, compounded annually, in the amount of \$589,954.⁷ (*See* Ex. 5 Decl. of Carl Degen at ¶ 5 and Ex. B (attaching table showing appropriate rates and formulas for prejudgment interest calculation under the T-bill rate.))

III. SECURE DOES NOT OBJECT TO FINJAN'S REQUEST FOR POSTJUDGMENT INTEREST

Secure does not dispute that postjudgment interest is granted as a matter of right, pursuant to 28 U.S.C. § 1961. Secure respectfully submits that, if the Court denies Secure's post-trial motions, then postjudgment interest should be calculated from the date of final judgment, using the formula set forth in section § 1961.

CONCLUSION

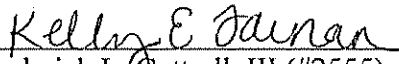
Based upon the foregoing, Finjan's motion for an amendment of the judgment, for accounting, and for prejudgment interest, should be denied.

⁷ If the Court awards Finjan prejudgment interest at Finjan's requested prime rate, compounded quarterly, Secure respectfully requests that the Court use the calculation attached as Exhibit 3, which calculates prejudgment interest based on ongoing sales, for a total of \$1,390,947. Finjan's prejudgment interest calculation (Finjan Ex. P) is flawed because it incorrectly assumes a lump sum payment on the first day of alleged infringement (thereby artificially raising the prejudgment interest total), instead of ongoing royalty payments per quarter. (*See* Ex. 5, Degen Decl. at ¶¶ 3-4 and Ex. A.) Finjan's damages expert, Mr. Parr, did not opine that a lump sum up front payment was appropriate, but rather he opined regarding a percentage of sales. (Tr. at 594:7-23 (D.I. 229).)

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UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 9, 2008, I electronically filed the foregoing with the Clerk of Court using CM/ECF and caused the same to be served on the plaintiff at the addresses and in the manner indicated below:

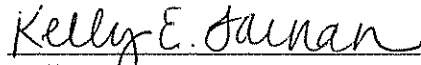
HAND DELIVERY & E-MAIL

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I further certify that on May 9, 2008, the foregoing document was sent to the following non-registered participants in the manner indicated:

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Kelly E. Farnan (#4395)

EXHIBIT 1

12790876 1

wrinkles, and keratoses. (The two patents at issue in this suit are collectively referred to as the “TTI Patents.”)

3. TTI provided notice of the TTI Patents to manufacturers, sellers and/or distributors of cosmetic products both in the United States and abroad, including, specifically, each of the Defendants. The notices explicitly informed each recipient, among other things, that: (i) the patents had been issued and assigned to TTI; and (ii) TTI was willing to enter into licensing agreements with such entities. To date, several of the largest manufacturers and/or marketers in the cosmetics industry have entered into such license agreements with TTI, including, without limitation, Avon, Chesebrough Pond’s, Elizabeth Arden, Allergan, Beiersdorf, Inc., L’Oreal, Chanel, Neoteric Cosmetics, Inc., and Erno Laszlo. Furthermore, TTI has received substantial royalty payments in return for granting such licenses.

4. However, Defendants have continued to refuse to recognize the TTI Patents and have willfully and deliberately infringed the TTI Patents by, among other things, promoting the use of their products through national advertisements and otherwise in a manner designed to induce infringement of the TTI Patents.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1338(a).

6. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) and (c) and 28 U.S.C. §1400(b).

THE PARTIES

The Plaintiff

7. Plaintiff TTI is a Delaware corporation with its principal place of business at 1105 North Market Street, Suite 1300, P.O. Box 8985, Wilmington, Delaware 19899. TTI is in the business of developing and licensing novel dermatological, pharmaceutical and skin care product technology. TTI is the assignee of certain patents issued to Drs. Van Scott and Yu (the "Inventors").

The Defendants

8. Defendant, ICN Pharmaceuticals, Inc. ("ICN") is a Delaware corporation with its principal place of business in California. ICN is in the business of manufacturing, distributing and/or selling cosmetic products in this District and elsewhere throughout the United States.

9. Defendant, Medicis Pharmaceutical Corporation ("Medicis") is a Delaware corporation with its principal place of business in New York. Medicis is in the business of manufacturing and/or selling cosmetic products in this District and elsewhere throughout the United States.

THE PATENTS

10. On October 1, 1996, United States Letters Patent No. 5,561,157 entitled "Method for Enhancing the Therapeutic Effect of a Composition Comprising Hydroquinone and Comprising Same" was duly and legally issued to the Inventors and assigned to TTI. A copy of this patent ("the '157 Patent") are annexed hereto as Exhibit A. The '157 Patent describes and claims compositions comprising alpha hydroxy acids in combination with hydroquinone. The '157 Patent also describes and claims methods of preparing and using such compositions to treat various skin conditions such as age spots, wrinkles, and keratoses.

11. On September 9, 1997, United States Letters Patent No. 5,665,776, entitled "Additives Enhancing Topical Actions of Therapeutic Agents" was duly and legally issued to the Inventors and assigned to TTI. A copy of this patent ("the '776 Patent") are annexed hereto as Exhibit B. The '776 Patent describes and claims compositions comprising alpha hydroxy acids in combination with hydroquinone. The '776 Patent also describes and claims methods of preparing and using such compositions to treat various skin conditions such as age spots, wrinkles, and keratoses.

12. TTI is the assignee of the '157 and '776 Patents.

13. TTI's methods for treating various skin conditions such as age spots, wrinkles, and keratoses, as described and claimed in the annexed patents, have enjoyed excellent commercial success since its introduction. Indeed, TTI's methods have become the method of choice for the consuming public for reducing wrinkles, fine lines and other visible effects of aging on the human skin.

FIRST CLAIM FOR RELIEF

14. TTI repeats and realleges the allegation of paragraphs 1 through 13 as if fully set forth herein.

15. Each of the Defendants, ICN and Medicis, are engaged in the manufacture, distribution and/or sale of cosmetic products comprising alpha hydroxy acids in combination with hydroquinone. These products are sold and promoted through national advertisements and other marketing materials that encourage prospective customers to apply such products to their skin for the purpose of visibly treating various skin conditions such as age spots, wrinkles, and keratoses - - i.e., to use their products in a manner that would infringe the '157 Patent.

16. By virtue of these promotional activities, Defendants have been contributing, and continue to contribute, to and/or to induce the infringement of the '157 Patent in violation of 35 U.S.C. §271.

17. Each Defendant has received express notice of the '157 Patent and/or had prior knowledge of that patent prior to the filing of this complaint. Despite notice of the '157 Patent and TTI's offer to negotiate a license agreement, Defendants either did not respond to TTI's notice or refused to enter into a license agreement, and continue to induce infringement of the '157 Patent in violation of 35 U.S.C. §271.

18. Defendants' actions have been willful and deliberate, entitling TTI to increased damages under 35 U.S.C. §284 and making this an exceptional case within the meaning of 35 U.S.C. §285.

SECOND CLAIM FOR RELIEF

19. TTI repeats and realleges the allegations of paragraphs 1 through 18 as if fully set forth herein.

20. Each of the Defendants, ICN and Medicis, are engaged in the manufacture, distribution and/or sale of cosmetic products comprising alpha hydroxy acids in combination with hydroquinone. These products are sold and promoted through national advertisements and other marketing materials that encourage prospective customers to apply such products to their skin for the purpose of visibly treating various skin conditions such as age spots, wrinkles, and keratoses - - i.e., to use their products in a manner that would infringe the '776 Patent.

21. By virtue of these promotional activities, Defendants have been contributing, and continue to contribute, to and/or to induce the infringement of the '776 Patent in violation of 35 U.S.C. §271.

22. Each Defendant has received express notice of the '776 Patent and/or had prior knowledge of that patent prior to the filing of this complaint. Despite notice of the '776 Patent and TTI's offer to negotiate a license agreement, Defendants either did not respond to TTI's notice or refused to enter into a license agreement, and continued to induce infringement of the '776 Patent in violation of 35 U.S.C. §271.

23. Defendants' actions have been willful and deliberate, entitling TTI to increased damages under 35 U.S.C. §284 and making this an exceptional case within the meaning of 35 U.S.C. §285.

WHEREFORE, TTI prays for judgment:

A. Finding that the '157 and '776 Patents have been infringed by the Defendants, as alleged herein;

B. Awarding damages adequate to compensate TTI for Defendants' infringement, but not less than a reasonable royalty for the use made of the claimed inventions by each Defendant, together with interest, including pre-judgment interest, and costs as fixed by the Court;

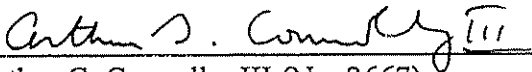
C. Finding that Defendants' infringements have been willful and deliberate;

D. Awarding TTI increased damages and attorneys' fees pursuant to 35 U.S.C. § 284 and § 285 because of the willful and deliberate nature of Defendants' infringement;

E. Permanently enjoining Defendants and their officers, agents, servants, employees and affiliates, as well as all others in active concert or participation with them as any of the foregoing, from inducing or contributing to the infringement of the '157 and '776 Patents;

F. Awarding TTI such other and further relief as this Court may deem just and proper.

Respectfully submitted,


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DATED: March 6, 2001

EXHIBIT 2

1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LUCENT TECHNOLOGIES INC.,)	
)	
Plaintiff,)	
)	
v.)	C A. No. 97- 347
)	
NEWBRIDGE NETWORKS CORPORATION,)	
NEWBRIDGE NETWORKS INC.,)	JURY TRIAL DEMANDED
)	
Defendants)	

COMPLAINT

Plaintiff Lucent Technologies Inc. ("Lucent"), by its attorneys, for its complaint against defendants Newbridge Networks Corporation, and its wholly owned subsidiary Newbridge Networks Inc. (collectively, "Newbridge"), hereby demands a jury trial and alleges as follows:

SUMMARY

1. This is a patent infringement action to stop Newbridge's unauthorized and infringing manufacture and sale of products incorporating Lucent's patented data networking inventions. Lucent is a leader in the field of design and manufacture of data networking equipment. Newbridge sells data networking equipment in competition with Lucent. Lucent seeks injunctive relief to prevent Newbridge from continuing to infringe Lucent's valuable patent rights in the field of data networking. In addition, Lucent seeks monetary damages for Newbridge's past infringement of these patents. Defendants' response to Lucent's assertion of these patents has failed to

conform to the required standard of care. Therefore, the damages awarded to Lucent should be trebled and Lucent should be awarded its attorney fees, costs, and expenses for this exceptional case.

NATURE OF THE ACTION

2. Lucent was formed in 1995 when AT&T Corp. ("AT&T") divested certain business segments that were engaged in product sales and development in areas that were not directly related to AT&T's core business as a communications provider. Among these divested business segments was Bell Laboratories, where the transistor, communications laser, and cellular telephone were first developed. These divested businesses were incorporated into a single corporate entity, Lucent, which is now a publicly-traded corporation, wholly independent of AT&T.

3. One of Lucent's businesses is the data networking equipment business, a technical field pioneered by Bell Laboratories. Data networking is a relatively new field, which relates to systems that allow data networks to communicate with each other. Bell Laboratories was an innovator in this field, investing millions of dollars into data networking-related research. Lucent continues this work, likewise investing millions of dollars each year in data networking product research and development. In addition, as part of the divestiture, Lucent received most of AT&T's sizeable data networking patent portfolio, with the right to receive royalties from existing and future licensees.

4. Newbridge manufactures and sells products that are covered by various Lucent patents. Lucent has, on several occasions, provided actual notice to Newbridge of its infringement of Lucent's patents. Newbridge, however, has ignored

these warnings by continuing to infringe, thus necessitating this action by Lucent to protect its intellectual property.

THE PARTIES

5. Lucent is a corporation organized under the laws of the State of Delaware, with its principal place of business in Murray Hill, New Jersey. Lucent is a leader in the field of data networking technology. Lucent owns all right, title, and interest, including the right to sue for past infringement, in the patents in suit.

6. Defendant Newbridge Networks Corporation is a Canadian company with its principal offices at 600 March Road, Kanata, Ontario, Canada. Newbridge Networks Corporation makes, uses, sells, and offers to sell data networking equipment in the United States under the product line "MainStreet." On information and belief, Newbridge Networks Corporation has committed acts of infringement in this district.

7. Defendant Newbridge Networks Inc. is a company incorporated under the laws of the State of Delaware, with its principal place of business at 593 Herndon Highway, Herndon, Virginia, 22071. Newbridge Networks Inc. is a wholly owned subsidiary of Newbridge Networks Corporation. Newbridge Networks Inc. uses, sells, and offers to sell the MainStreet data networking products in the United States. In addition, on information and belief, Newbridge Networks Inc. makes and imports the MainStreet line into the United States, and has committed acts of infringement in this district.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this patent infringement action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(c), 1391(d), and 1400(b) because defendants have committed acts of infringement in this district and defendant Newbridge Networks, Inc. resides in this district.

FACTUAL BACKGROUND

Overview Of The Data Networking Technology

10. This case involves data networking technology. In general, data networking technology allows various electronic devices (*e.g.*, computers, phones, and facsimile machines) to communicate with one another. For instance, data networking allows a computer user in one location to send an electronic mail message to another computer user in another location. In a broad sense, the telephone system (commonly referred to as the Public Switched Telephone Network, or "PSTN") is a type of data networking system in which the data being transmitted is the human voice. In fact, the telephone system is often used as part of a data network, and proposals are now being developed to make the telephone system part of one global data networking system.

11. Specifically, this case involves a type of data networking technology called "packet switching." Packet switching is a way of transmitting data between two or more users. To use packet switching, the two communicating users must be connected in some manner to a "network" which supports packet switching. The network may be a small, local area network ("LAN") that connects users within a single,

small office. More commonly, it is a large, wide area network (“WAN”) connecting different LANs in different locations.

12. Transmission of data via packet switching requires that all data be in digital form, i.e., represented by a series of ones and zeroes. Thus, where the data being sent is the human voice, it is first converted into a digital format (a series of data streams). Where the data is already in digital format (e.g., e-mail or digital audio or video), it need not be converted. A first packet switch located near the sender breaks down the digital data stream into a number of discrete “packets” or segments. These packets are then forwarded to a second packet switch connected to the receiving user (possibly through a number of other packet switches). The second packet switch reassembles the message into the original digital data stream. The digital data stream is ultimately converted into a form that is useable by the end user, e.g., voice, video or text.

13. Packet switching differs from the “circuit switching” normally employed by standard telephone systems. Circuit switching requires that an actual physical circuit be set up and dedicated for the duration of the telephone call, to continuously transmit data. Packet switching does not require that a circuit be dedicated for the duration of the communication. Instead, packet switching is designed to allow individual packets to be transmitted over the same path. This allows for more efficient use of the overall system, i.e., it can send more information to more users, in a faster manner, using the same basic network structure. It also allows additional design flexibility for features such as congestion control and error correction.

14. Two important methods of packet switching are central to this case. The first is “frame relay.” In frame relay, the packets of data are formed in variable-sized “frames” before sending them through the network. The second is

Asynchronous Transfer Mode (“ATM”), in which the packets of data sent through the network are contained in “cells” of a uniform size. Each of these methods is an improvement over using conventional circuit switching to transmit data

Lucent’s Data Networking Patents

15. Lucent owns a number of patents relating to packet switching, frame relay and ATM resulting from work performed by Bell Laboratories. One of these patents, U.S. Patent No. 4,769,810 by Eckberg et al. (“the ‘810 patent,” attached as exhibit A), describes and claims a method and apparatus for controlling congestion in a packet switching network. The invention solved a problem in packet switching systems of how to relieve excessive congestion in the network during periods of peak use. The ‘810 patent covers a method of monitoring whether a particular user is transmitting data at an excessive rate and marking packets to be dropped. The ‘810 patent also covers the packet switching apparatus that allow this marking to be accomplished. This invention is used in both the frame relay and the ATM methods of packet switching.

16. A second Eckberg et al. patent, U.S. Patent No. 4,769, 811 (“the ‘811 patent,” attached as exhibit B), relates to congestion control in a packet switching network. The ‘811 patent describes and claims a method of determining whether to drop a packet due to congestion, as well as the apparatus for performing this method. This invention allows the system to better control which packets are dropped in the event of network congestion. For example, a packet switching system employing this invention may preferentially drop certain packets of a single user who excessively uses the system, while preserving other packets, in the event of excessive congestion. This invention is used in both the frame relay and the ATM methods of packet switching.

17. A third patent, U.S. Patent No. 4,979,174, by Cheng et al., entitled “Error Correction and Detection Apparatus and Method” (“the ‘174 patent,” attached as exhibit C), describes and claims a method and apparatus for both detecting and correcting errors in packet information. The invention capitalizes on the superior error-correction capabilities of single-bit error correction and the superior error-detection capabilities of multi-bit error detection, by providing a means to use both to correct and detect errors in the transmission of different kinds of data. This invention is used in ATM networks.

18. A fourth patent, U.S. Patent No. 4,437,087, by Petr (“the ‘087 patent,” attached as exhibit D), covers a method and apparatus for “adaptive differential pulse code modulation,” or “ADPCM,” which is used to compress speech and other voice band signals into a useable digital format. This innovation is significant because it allows networks that operate on digital signals, like packet switching networks, to more efficiently transmit voice data (and thus act as a digital telephone network). In fact, the ‘087 invention was adopted by an international standards body as the standard modulation technique for compressing voice signals to 32 kilobits per second. With respect to this standard, AT&T promised to license the ‘087 patent royalty-free at 32 kilobits per second, but only in exchange for a reciprocal license from the licensee on the same terms. The invention claimed in the ‘087 patent is not limited, however, to the standard compression rate of 32 kilobits per second. The ‘087 patented invention can be used with either frame relay or ATM.

**Newbridge's MainStreet Products
Infringe Lucent's Data Networking Patents**

19. Newbridge manufactures and sells packet switching equipment under the trade name "MainStreet." Newbridge sells this equipment in direct competition with switching equipment sold by Lucent. Newbridge's MainStreet line of products, including the MainStreet 3600 line of switch products, includes switches for frame relay networks.

20. Newbridge's frame relay network products include congestion control features. Newbridge's frame relay products with these features infringe at least the '810 and '811 patents. Newbridge frame relay products also use ADPCM voice compression. On information and belief, Newbridge practices the standard 32 kilobit per second ADPCM compression covered by the '087 patent. Newbridge, however, does not have a license from Lucent to practice this invention. In addition, on information and belief, Newbridge has made modifications to its ADPCM compression that removes it from compliance with the standard for which AT&T offered a royalty free license, but which modifications remain covered by the '087 patent.

21. Newbridge also manufactures and sells a line of MainStreet switches for ATM packet switching. Newbridge sells these switches in direct competition with Lucent. The Newbridge switches for ATM networks include the MainStreet 36170 line of switch products.

22. Newbridge's ATM products include congestion and error control features. Newbridge's ATM products with these features infringe at least the '810, '811, and '174 patents.

Newbridge Has Been On Notice Of Lucent's Patent Rights

23. Newbridge received actual notice from both AT&T and Lucent that both its frame relay and ATM products infringe the above-described patents. In spite of this actual notice, Newbridge has continued its infringement of Lucent's valuable patent rights, and has actively encouraged others to use the infringing Newbridge equipment in an infringing manner.

Lucent Will Be Irreparably Harmed By Newbridge's Continued Infringement

24. Lucent has been damaged by Newbridge's infringement of its valuable patent rights. First, Newbridge's infringement of Lucent's patent rights has deprived Lucent of sales of data networking equipment that it would have made but for Newbridge's infringement. Second, Newbridge's continuing infringement damages Lucent's reputation and goodwill as a leading source of technological advancements in the data networking industry. The public and marketplace perception of Lucent as a source of data networking innovations erodes when unauthorized infringers, like Newbridge, are permitted to a free ride on Lucent's intellectual property. Third, Newbridge's unauthorized, infringing use of Lucent's patents has threatened the value of this intellectual property. Newbridge's disregard for Lucent's property rights threatens Lucent's relationships with businesses that pay for the right to use this property. Accordingly, unless and until Newbridge's continued acts of infringement are enjoined, Lucent will suffer irreparable harm for which there is no adequate remedy at law.

COUNT I
(Patent Infringement of United States Patent No. 4,769,810)
(Against Both Defendants)

25. Paragraphs 1 through 24 are incorporated by reference as if stated fully herein.

26. Lucent owns the '810 patent, including the right to sue for past infringement.

27. The '810 patent is valid and enforceable.

28. Defendants make, use, sell, and offer to sell products that infringe at least one of the claims of the '810 patent.

29. On information and belief, defendants have also contributed to and/or induced infringement of the '810 patent

30. Lucent has been damaged by defendants' infringement and will suffer irreparable injury unless enjoined by this Court.

COUNT II
(Patent Infringement of United States Patent No. 4,769,811)
(Against Both Defendants)

31. Paragraphs 1 through 24 are incorporated by reference as if stated fully herein.

32. Lucent owns the '811 patent, including the right to sue for past infringement.

33. The '811 patent is valid and enforceable.

34. Defendants make, use, sell, and offer to sell products that infringe at least one of the claims of the '811 patent.

35. On information and belief, defendants have also contributed to and/or induced infringement of the '811 patent.

36. Lucent has been damaged by defendants' infringement and will suffer irreparable injury unless enjoined by this Court.

COUNT III
(Patent Infringement of United States Patent No. 4,979,174)
(Against Both Defendants)

37. Paragraphs 1 through 24 are incorporated by reference as if stated fully herein.

38. Lucent owns the '174 patent, including the right to sue for past infringement.

39. The '174 patent is valid and enforceable.

40. Defendants make, use, sell, and offer to sell products that infringe at least one of the claims of the '174 patent.

41. On information and belief, defendants have also contributed to and/or induced infringement of the '174 patent.

42. Lucent has been damaged by defendants' infringement and will suffer irreparable injury unless enjoined by this Court.

COUNT IV
(Patent Infringement of United States Patent No. 4,437,087)
(Against Both Defendants)

43. Paragraphs 1 through 24 are incorporated by reference as if stated fully herein.

44. Lucent owns the '087 patent, including the right to sue for past infringement.

45. The '087 patent is valid and enforceable

46. Defendants make, use, sell, and offer to sell products that infringe at least one of the claims of the '087 patent.

47. On information and belief, defendants have also contributed to and/or induced infringement of the '087 patent.

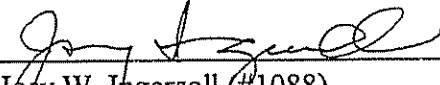
48. Lucent has been damaged by defendants' infringement and will suffer irreparable injury unless enjoined by this Court.

WHEREFORE, Lucent respectfully requests that the Court:

- a. Permanently enjoin defendants, their agents, attorneys, successors and assigns, and all persons acting on their behalf or within their control, from making, using, selling, offering to sell, importing, advertising, or otherwise engaging in acts of infringement of Lucent's patents as alleged herein,
- b. Award actual damages for said infringement;
- c. Award treble damages pursuant to 35 U.S.C. § 284 in view of defendants' failure to meet the required standard of care in continuing their acts of infringement after notice from Lucent;
- d. Enter an order declaring this as an exceptional case pursuant to 35 U.S.C. § 285 and award Lucent its attorney fees, costs, and expenses in this exceptional case; and

e. Grant to Lucent such other further relief as may be just and appropriate.

Respectfully submitted,



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Attorneys for Lucent Technologies Inc.

Dated: June 24, 1997

EXHIBIT 3

30

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

_____)	
LUCENT TECHNOLOGIES INC.,)	
)	
Plaintiff-Counterclaim Defendant,)	
)	
v.)	Civil Action No. 97-347 (JJF)
)	
NEWBRIDGE NETWORKS CORPORATION,)	
)	
Defendant-Counterclaim Plaintiff,)	
)	
and)	
)	
NEWBRIDGE NETWORKS INC.,)	
)	
Defendant.)	
_____)	

AMENDED COMPLAINT

Plaintiff Lucent Technologies Inc. ("Lucent"), by its attorneys, for its complaint against defendants Newbridge Networks Corporation, and its wholly owned subsidiary Newbridge Networks Inc. (collectively, "Newbridge"), hereby demands a jury trial and alleges as follows:

SUMMARY

1. This is a patent infringement action to stop Newbridge's unauthorized and infringing manufacture and sale of products incorporating Lucent's patented data networking inventions. Lucent is a leader in the field of design and manufacture of data networking equipment. Newbridge sells data networking equipment in competition with Lucent. Lucent seeks injunctive relief to prevent Newbridge from continuing to infringe Lucent's valuable

patent rights in the field of data networking. In addition, Lucent seeks monetary damages for Newbridge's past infringement of these patents. Defendants' response to Lucent's assertion of these patents has failed to conform to the required standard of care. Therefore, the damages awarded to Lucent should be trebled and Lucent should be awarded its attorney fees, costs, and expenses for this exceptional case.

NATURE OF THE ACTION

2. Lucent was formed in 1995 when AT&T Corp. ("AT&T") divested certain business segments that were engaged in product sales and development in areas that were not directly related to AT&T's core business as a communications provider. Among these divested business segments was Bell Laboratories, where the transistor, communications laser, and cellular telephone were first developed. These divested businesses were incorporated into a single corporate entity, Lucent, which is now a publicly-traded corporation, wholly independent of AT&T.

3. One of Lucent's businesses is the data networking equipment business, a technical field pioneered by Bell Laboratories. Data networking is a relatively new field, which relates to systems that allow data networks to communicate with each other. Bell Laboratories was an innovator in this field, investing millions of dollars into data networking-related research. Lucent continues this work, likewise investing millions of dollars each year in data networking product research and development. In addition, as part of the divestiture, Lucent received most of AT&T's sizeable data networking patent portfolio, with the right to receive royalties from existing and future licensees.

4. Newbridge manufactures and sells products that are covered by various Lucent patents. Lucent has, on several occasions, provided actual notice to Newbridge of its infringement of many of Lucent's patents. Newbridge, however, has ignored these warnings by continuing to infringe, thus necessitating this action by Lucent to protect its intellectual property.

THE PARTIES

5. Lucent is a corporation organized under the laws of the State of Delaware, with its principal place of business in Murray Hill, New Jersey. Lucent is a leader in the field of data networking technology. Lucent owns all right, title, and interest, including the right to sue for past infringement, in the patents in suit.

6. Defendant Newbridge Networks Corporation is a Canadian company with its principal offices at 600 March Road, Kanata, Ontario, Canada. Newbridge Networks Corporation makes, uses, sells, and offers to sell data networking equipment in the United States under the product line "MainStreet." On information and belief, Newbridge Networks Corporation has committed acts of infringement in this district.

7. Defendant Newbridge Networks Inc. is a company incorporated under the laws of the State of Delaware, with its principal place of business at 593 Herndon Highway, Herndon, Virginia, 22071. Newbridge Networks Inc. is a wholly owned subsidiary of Newbridge Networks Corporation. Newbridge Networks Inc. uses, sells, and offers to sell the MainStreet data networking products in the United States. In addition, on information and belief, Newbridge Networks Inc. makes and imports the MainStreet line into the United States, and has committed acts of infringement in this district.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this patent infringement action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(c), 1391(d), and 1400(b) because defendants have committed acts of infringement in this district and defendant Newbridge Networks, Inc. resides in this district.

FACTUAL BACKGROUND

Overview Of The Data Networking Technology

10. This case involves data networking technology. In general, data networking technology allows various electronic devices (*e.g.*, computers, phones, and facsimile machines) to communicate with one another. For instance, data networking allows a computer user in one location to send an electronic mail message to another computer user in another location. In a broad sense, the telephone system (commonly referred to as the Public Switched Telephone Network, or “PSTN”) is a type of data networking system in which the data being transmitted is the human voice. In fact, the telephone system is often used as part of a data network, and proposals are now being developed to make the telephone system part of one global data networking system.

11. Specifically, this case involves a type of data networking technology called “packet switching.” Packet switching is a way of transmitting data between two or more users. To use packet switching, the two communicating users must be connected in some manner to a “network” which supports packet switching. The network may be a small, local area

network (“LAN”) that connects users within a single, small office. More commonly, it is a large, wide area network (“WAN”) connecting different LANs in different locations.

12. Transmission of data via packet switching requires that all data be in digital form, i.e., represented by a series of ones and zeroes. Thus, where the data being sent is the human voice, it is first converted into a digital format (a series of data streams). Where the data is already in digital format (e.g., e-mail or digital audio or video), it need not be converted. A first packet switch located near the sender breaks down the digital data stream into a number of discrete “packets” or segments. These packets are then forwarded to a second packet switch connected to the receiving user (possibly through a number of other packet switches). The second packet switch reassembles the message into the original digital data stream. The digital data stream is ultimately converted into a form that is useable by the end user, *e.g.*, voice, video or text.

13. Packet switching differs from the “circuit switching” normally employed by standard telephone systems. Circuit switching requires that an actual physical circuit be set up and dedicated for the duration of the telephone call, to continuously transmit data. Packet switching does not require that a circuit be dedicated for the duration of the communication. Instead, packet switching is designed to allow individual packets to be transmitted over the same path. This allows for more efficient use of the overall system, *i.e.*, it can send more information to more users, in a faster manner, using the same basic network structure. It also allows additional design flexibility for features such as congestion control and error correction.

14. Two important methods of packet switching are central to this case. The first is “frame relay.” In frame relay, the packets of data are formed in variable-sized “frames”

before sending them through the network. The second is Asynchronous Transfer Mode (“ATM”), in which the packets of data sent through the network are contained in “cells” of a uniform size. Each of these methods is an improvement over using conventional circuit switching to transmit data.

Lucent’s Data Networking Patents

15. Lucent owns a number of patents relating to packet switching, frame relay and ATM resulting from work performed by Bell Laboratories. One of these patents, U.S. Patent No. 4,769,810 by Eckberg et al. (“the ‘810 patent,” attached as exhibit A), describes and claims a method and apparatus for controlling congestion in a packet switching network. The invention solved a problem in packet switching systems of how to relieve excessive congestion in the network during periods of peak use. The ‘810 patent covers a method of monitoring whether a particular user is transmitting data at an excessive rate and marking packets to be dropped. The ‘810 patent also covers the packet switching apparatus that allow this marking to be accomplished. This invention is used in both the frame relay and the ATM methods of packet switching.

16. A second Eckberg et al. patent, U.S. Patent No. 4,769, 811 (“the ‘811 patent,” attached as exhibit B), relates to congestion control in a packet switching network . The ‘811 patent describes and claims a method of determining whether to drop a packet due to congestion, as well as the apparatus for performing this method. This invention allows the system to better control which packets are dropped in the event of network congestion. For example, a packet switching system employing this invention may preferentially drop certain packets of a single user who excessively uses the system, while preserving other packets, in the

event of excessive congestion. This invention is used in both the frame relay and the ATM methods of packet switching.

17. A third patent, U.S. Patent No. 4,979,174, by Cheng et al., entitled "Error Correction and Detection Apparatus and Method" ("the '174 patent," attached as exhibit C), describes and claims a method and apparatus for both detecting and correcting errors in packet information. The invention capitalizes on the superior error-correction capabilities of single-bit error correction and the superior error-detection capabilities of multi-bit error detection, by providing a means to use both to correct and detect errors in the transmission of different kinds of data. This invention is used in ATM networks.

18. A fourth patent, U.S. Patent No. 4,437,087, by Petr ("the '087 patent," attached as exhibit D), covers a method and apparatus for "adaptive differential pulse code modulation," or "ADPCM," which is used to compress speech and other voice band signals into a useable digital format. This innovation is significant because it allows networks that operate on digital signals, like packet switching networks, to more efficiently transmit voice data (and thus act as a digital telephone network). In fact, the '087 invention was adopted by an international standards body as the standard modulation technique for compressing voice signals to 32 kilobits per second. With respect to this standard, AT&T promised to license the '087 patent royalty-free at 32 kilobits per second, but only in exchange for a reciprocal license from the licensee on the same terms. The invention claimed in the '087 patent is not limited, however, to the standard compression rate of 32 kilobits per second. The '087 patented invention can be used with either frame relay or ATM.

19. A fifth patent, U.S. Patent No. 4,750,136, by Arpin et al (“the ‘136 patent,” attached as exhibit E), covers a method and apparatus for initializing a communications system. This invention is significant because it eliminates the need for a user to manually load parameters into a circuit board being inserted into a switch or other communications device. The invention of the ‘136 patent also allows a user to replace a malfunctioning circuit board in a switch or other communications device without powering down the device. The ‘136 patented invention can be used in any communications system, including ATM and frame relay systems.

**Newbridge’s MainStreet Products
Infringe Lucent’s Data Networking Patents**

20. Newbridge manufactures and sells packet switching equipment under the trade name “MainStreet.” Newbridge sells this equipment in direct competition with switching equipment sold by Lucent. Newbridge’s MainStreet line of products, including the MainStreet 3600 line of switch products, includes switches for frame relay networks.

21. Newbridge’s frame relay network products include congestion control features. Newbridge’s frame relay products with these features infringe at least the ‘810 and ‘811 patents. Newbridge frame relay products also use ADPCM voice compression. On information and belief, Newbridge practices the standard 32 kilobit per second ADPCM compression covered by the ‘087 patent. Newbridge, however, does not have a license from Lucent to practice this invention. In addition, on information and belief, Newbridge has made modifications to its ADPCM compression that removes it from compliance with the standard for which AT&T offered a royalty free license, but which modifications remain covered by the ‘087 patent.

22. Newbridge also manufactures and sells a line of MainStreet switches for ATM packet switching. Newbridge sells these switches in direct competition with Lucent. The Newbridge switches for ATM networks include the MainStreet 36170 line of switch products.

23. Newbridge's ATM products include congestion and error control features. Newbridge's ATM products with these features infringe at least the '810, '811, and '174 patents.

24. The Newbridge frame relay and ATM products have an initialization feature that eliminates the need for a user to manually load parameters into circuit boards inserted into the products. This feature also allows a user to replace a malfunctioning circuit board in a Newbridge frame relay or ATM product without powering down the device. The Newbridge frame relay and ATM products with this initialization feature infringe the '136 patent.

Newbridge Has Been On Notice Of Lucent's Patent Rights

25. Newbridge received actual notice from either AT&T or Lucent that both its frame relay and ATM products infringe the above-described patents. In spite of this actual notice, Newbridge has continued its infringement of Lucent's valuable patent rights, and has actively encouraged others to use the infringing Newbridge equipment in an infringing manner.

Lucent Will Be Irreparably Harmed By Newbridge's Continued Infringement

26. Lucent has been damaged by Newbridge's infringement of its valuable patent rights. First, Newbridge's infringement of Lucent's patent rights has deprived Lucent of sales of data networking equipment that it would have made but for Newbridge's infringement. Second, Newbridge's continuing infringement damages Lucent's reputation and goodwill as a leading source of technological advancements in the data networking industry. The public and

marketplace perception of Lucent as a source of data networking innovations erodes when unauthorized infringers, like Newbridge, are permitted to free ride on Lucent's intellectual property. Third, Newbridge's unauthorized, infringing use of Lucent's patents has threatened the value of this intellectual property. Newbridge's disregard for Lucent's property rights threatens Lucent's relationships with businesses that pay for the right to use this property. Accordingly, unless and until Newbridge's continued acts of infringement are enjoined, Lucent will suffer irreparable harm for which there is no adequate remedy at law.

COUNT I
(Patent Infringement of United States Patent No. 4,769,810)
(Against Both Defendants)

27. Paragraphs 1 through 26 are incorporated by reference as if stated fully herein.

28. Lucent owns the '810 patent, including the right to sue for past infringement.

29. The '810 patent is valid and enforceable.

30. Defendants make, use, sell, and offer to sell products that infringe at least one of the claims of the '810 patent.

31. On information and belief, defendants have also contributed to and/or induced infringement of the '810 patent.

32. Lucent has been damaged by defendants' infringement and will suffer irreparable injury unless enjoined by this Court.

COUNT II
(Patent Infringement of United States Patent No. 4,769,811)
(Against Both Defendants)

33. Paragraphs 1 through 26 are incorporated by reference as if stated fully herein.
34. Lucent owns the '811 patent, including the right to sue for past infringement.
35. The '811 patent is valid and enforceable.
36. Defendants make, use, sell, and offer to sell products that infringe at least one of the claims of the '811 patent.
37. On information and belief, defendants have also contributed to and/or induced infringement of the '811 patent.
38. Lucent has been damaged by defendants' infringement and will suffer irreparable injury unless enjoined by this Court.

COUNT III
(Patent Infringement of United States Patent No. 4,979,174)
(Against Both Defendants)

39. Paragraphs 1 through 26 are incorporated by reference as if stated fully herein.
40. Lucent owns the '174 patent, including the right to sue for past infringement.
41. The '174 patent is valid and enforceable.

42. Defendants make, use, sell, and offer to sell products that infringe at least one of the claims of the '174 patent.

43. On information and belief, defendants have also contributed to and/or induced infringement of the '174 patent.

44. Lucent has been damaged by defendants' infringement and will suffer irreparable injury unless enjoined by this Court.

COUNT IV
(Patent Infringement of United States Patent No. 4,437,087)
(Against Both Defendants)

45. Paragraphs 1 through 26 are incorporated by reference as if stated fully herein.

46. Lucent owns the '087 patent, including the right to sue for past infringement.

47. The '087 patent is valid and enforceable.

48. Defendants make, use, sell, and offer to sell products that infringe at least one of the claims of the '087 patent.

49. On information and belief, defendants have also contributed to and/or induced infringement of the '087 patent.

50. Lucent has been damaged by defendants' infringement and will suffer irreparable injury unless enjoined by this Court.

COUNT V
(Patent Infringement of United States Patent No. 4,750, 136)
(Against Both Defendants)

51. Paragraphs 1 through 26 are incorporated by reference as if stated fully herein.

52. Lucent owns the '136 patent, including the right to sue for past infringement.

53. The '136 patent is valid and enforceable.

54. Defendants make, use, sell, and offer to sell products that infringe at least one of the claims of the '136 patent.

55. On information and belief, defendants have also contributed to and/or induced infringement of the '136 patent.

56. Lucent has been damaged by defendants' infringement and will suffer irreparable injury unless enjoined by this Court.

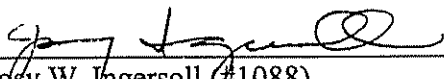
57. WHEREFORE, Lucent respectfully requests that the Court:

a. Permanently enjoin defendants, their agents, attorneys, successors and assigns, and all persons acting on their behalf or within their control, from making, using, selling, offering to sell, importing, advertising, or otherwise engaging in acts of infringement of Lucent's patents as alleged herein;

b. Award actual damages for said infringement;

- c. Award treble damages pursuant to 35 U.S.C. § 284 in view of defendants' failure to meet the required standard of care in continuing their acts of infringement after notice from Lucent;
- d. Enter an order declaring this as an exceptional case pursuant to 35 U.S.C. § 285 and award Lucent its attorney fees, costs, and expenses in this exceptional case; and
- e. Grant to Lucent such other further relief as may be just and appropriate.

Respectfully submitted,



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Dated: January 13, 1998

Attorneys for Lucent Technologies Inc.

EXHIBIT 4

This page was printed from the Secure Computing Corporation web site,
located at <http://www.securecomputing.com/index.cfm?key=1312>

Product Life Cycle Information

Generally, Secure Computing® provides technical support on our products as it relates to the hosting platform for three (3) years. This is to ensure that our support-services customers can be confident that we will have a supported version of our software available for their operating system, host application, or appliance platform for typically no less than three years from the date that the product first shipped.

Secure Computing maintains a product life cycle program to ensure our customers clearly understand the support status of their Secure Computing products at all times. Policies related to product life stages vary by product. Appliances, for example, have different life cycle characteristics than do pure software products or than do subscription-based services like URL filtering or anti-virus updates. Our product life cycle programs assume that our customers stay relatively current with the latest released version of our products, and upgrade their Secure Computing software as new releases become available.

Product Life Cycle Charts

The following charts detail the product life cycle support status of Secure Computing's products.

- Identity and Access Management
 - SafeWord® versions
 - SecureWire™
- Network Gateway Security (UTM/Firewall/VPN)
 - Sidewinder®
 - Sidewinder Anti-Spam Add-On Module
 - Sidewinder SoftRemote Add-On Module
 - SecurityReporter™
 - Secure CommandCenter™
 - Sidewinder G2® Enterprise Manager
 - CyberGuard® Classic
 - CyberGuard® TSP
 - SnapGear®
 - Gauntlet™
 - Global Command Center™ (GCC)
- Web Gateway Security
 - Webwasher® Web Gateway Security Appliance
 - Webwasher®
 - SmartFilter®
 - Internet Database of Categorized Content
 - N2H2 Bess® and Sentian™
 - ZIX Message and Web Inspector
- Messaging Products

Contact Customer Service with questions, or to receive future support announcements regarding product status.

Life Stage Descriptions

- **ACTIVE Status**
Products identified with the Active status are currently orderable and no last order date has been published. The product is fully supported by Secure Computing.

Recommendation: Purchase

- **LOD Status**

Products identified with the LOD status have a published last order date or they may have in fact passed the last order date. The product is fully supported by Secure Computing.

Recommendation: Make last purchase or plan for upgrade

- **MAINTENANCE Status**

Products identified with the Maintenance status have a published end of life date and will continue to be supported with minor fixes & patches but will not receive any new feature enhancements.

Recommendation: Upgrade as soon as possible

- **EOL Status**

Products identified with the EOL status have a published end of life date and they have past their end of life date. The product is no longer supported under Secure Computing agreements. No new software releases for the product's platform (e.g., the host operating system, host application, or appliance platform) are planned, and no additional maintenance releases or patches will be made available.

Recommendation: Must upgrade

Product Life Cycle Charts

The following charts detail the product life cycle support status of Secure Computing products.

Identity and Access Management

SafeWord® Strong Authentication Product List

Software/version	Status	LOD date	EOL date	Supported platforms
SafeWord® RemoteAccess™ 2.2	Active			WIN 2000, WIN 2003
SafeWord® RemoteAccess™ 2.1	LOD*	12/29/06		WIN 2000, WIN 2003
SafeWord® RemoteAccess™ 2.0	LOD*	09/30/05		WIN 2000, WIN 2003
*Note: The above LOD versions are past LOD, in support, (Must upgrade to v2.2 for maintenance)				
SafeWord® RemoteAccess™, Cisco Compatible 2.2	Active			WIN 2000, WIN 2003
SafeWord® RemoteAccess™, Cisco Compatible 2.1	LOD*	12/29/06		WIN 2000, WIN 2003
SafeWord RemoteAccess™, Cisco Compatible 2.0	LOD*	09/30/05		WIN 2000, WIN 2003
*Note: The above LOD versions are past LOD, in support, (Must upgrade to v2.2 for maintenance)				
SafeWord® for Citrix® 2.2	Active			WIN 2000, WIN 2003
SafeWord® for Citrix® 2.1	LOD*	12/29/06		WIN 2000, WIN 2003
SafeWord® for Citrix® 2.0	LOD*	09/30/05		WIN 2000, WIN 2003
SafeWord® for Citrix® 1.1	LOD*	12/18/03		WIN 2000
*Note: The above LOD versions are past LOD, in support, (Must upgrade to v2.2 for maintenance)				
SafeWord® for Check Point 2.2	Active			WIN 2000, WIN 2003
SafeWord® for Check Point 2.1	LOD*	12/29/06		WIN 2000, WIN 2003
SafeWord® for Check Point 2.0	LOD*	09/30/05		WIN 2000, WIN 2003

*Note: The above LOD versions are past LOD, in support, (Must upgrade to v2.2 for maintenance)				
SafeWord® for Nortel Networks 2.2	Active			WIN 2000, WIN 2003
SafeWord® for Nortel Networks 2.1	LOD*	12/29/06		WIN 2000, WIN 2003
SafeWord® for Nortel Networks 2.0	LOD*	09/30/05		WIN 2000, WIN 2003
*Note: The above LOD versions are past LOD, in support, (Must upgrade to v2.2 for maintenance)				
SafeWord® PremierAccess® 4.0	Active			WIN 2000, WIN 2003, SOL 9-10
SafeWord® PremierAccess® 3.2	Active			WIN 2000, WIN 2003, SOL 9-10
SafeWord® PremierAccess® 3.1.1	LOD*	12/31/04		WIN 2000, SOL 7-8
SafeWord® PremierAccess® 3.1	LOD*	11/27/02		WIN 2000, SOL 7-8
SafeWord® PremierAccess® 3.0	LOD*	05/31/02		WIN 2000, SOL 7-8
*Note: The above LOD versions are past LOD, in support, (Must upgrade to v4.0 or v3.2 for maintenance)				
SafeWord Plus™ 2.1.1	EOL		01/31/06	SOL 7
SafeWord Plus™ 2.1	EOL		01/31/06	SOL 7
SafeWord Plus™ 2.0	EOL		01/31/06	SOL 7
SafeWord® AS 5.x	EOL		12/31/02	WINNT4, SOL 2.5-7, HP-UX11

Patches and upgrades >>

SecureWire Product List

Model	Status	LOD date	EOL date	Original release	Comments
2500	ACTIVE			3.0.0	
500	ACTIVE			3.0.0	
100	ACTIVE			3.0.0	

Network Gateway Security (UTM/Firewall/VPN)

Sidewinder® (G2)

Note: These tables for Sidewinder G2 below, reflect product life cycle status for major product version and their updates, up to 3 decimal points (e.g. 6.1.1). Beginning in November 2005, the life cycle support information for patch levels (e.g. 6.1.1.03) will be noted in the release notes for each patch.

Sidewinder® (G2) Software Only - for customers running on a hardware platform of their own choosing (i.e. not an appliance)

Version	Status	LOD date	EOL date	Comments
6.1.1.x	EOL	Not for sale, upgrade only	12/31/06	Software upgrades available until 3/31/06. All software only versions are EOL on 12/31/06. Please inquire about special discounts on appliance upgrades.
6.1.0.x	EOL	Not for sale, upgrade	12/31/06	Software upgrades available until 6/30/05. All software only versions are EOL on 12/31/06. Please inquire about special discounts on

		only		appliance upgrades.
6.0.x	EOL	6/30/04	2/1/06	-
5.2.x	EOL	3/31/03	12/31/04	-
5.1.x	EOL		2/28/03	-
5.0.x	EOL		6/30/02	-

Sidewinder and Sidewinder G2 patches are available here >>

Sidewinder® (G2) - Appliance Hardware

Model	Status	LOD date	EOL date	Original release	Compatible & Supported versions	Replacement Model
210 E	ACTIVE			7.0.0.02	7.0.0.02 with 7.0.0.02H06	
410 E	ACTIVE			7.0.0.02	7.0.0.02 with 7.0.0.02H06	
510 E	ACTIVE			7.0.0.02	7.0.0.02 with 7.0.0.02H06	
1100 E	ACTIVE			7.0.0.02	7.0.0.02 with 7.0.0.02H06	
2100 E	ACTIVE			7.0.0.02	7.0.0.02 with 7.0.0.02H06	
2150 E	ACTIVE			7.0.0.02	7.0.0.02 with 7.0.0.02H06	
4150 E	ACTIVE			7.0.0.02	7.0.0.02 with 7.0.0.02H06	
110 D	LOD	4/30/08		6.1.2.01	6.1.2.01 or higher	110 E
210 D	LOD	4/30/08		6.1.2.01	6.1.2.01 or higher	210 E
410 D	LOD	4/30/08		6.1.2	6.1.2 or higher	410 E
510 D	LOD	4/30/08		6.1.2	6.1.2 or higher	510 E
1100 D	LOD	4/30/08		6.1.2.02	6.1.2.02 or higher	1100 E
2100 D	LOD	4/30/08		6.1.2.02	6.1.2.02 or higher	2100 E
2150 D	LOD	4/30/08		6.1.2.02	6.1.2.02 or higher	2150 D
4150 D	LOD	4/30/08		6.1.2.02	6.1.2.02 or higher	4150 E
110 C	LOD	9/30/06		6.1.0.05	6.1.2 or higher	110 D
210 C	LOD	9/30/06		6.1.0.05	6.1.2 or higher	210 D
410 C	LOD	4/30/06		6.1.0.05	6.1.2 or higher	410 D
510 C	LOD	4/30/06		6.1.0.05	6.1.2 or higher	510 D
1100 C	LOD	12/31/06		6.1.1.01	6.1.2 or higher	1100 D
2100 C	LOD	12/31/06		6.1.0.05	6.1.2 or higher	2100 D
2150 C	LOD	12/31/06		6.1.0.05	6.1.2 or higher	2150 D
4150 C	LOD	12/31/06		6.1.1.01	6.1.2 or higher	4150 D
1100 B	LOD	6/30/05		6.1.0.05	6.1.2 or higher	
4150	LOD	5/1/05		6.1	6.1.2 or higher	
210	LOD	3/15/05		6.1	6.1.2 or higher	
310a	LOD	10/31/04		6.1	6.1.2 or higher	
310b	LOD	3/15/05		6.1.0.04	6.1.2 or higher	

315	LOD	3/15/05		6.1	6.1.2 or higher	
410a	LOD	10/31/04		6.1	6.1.2 or higher	
410b	LOD	3/15/05		6.1.0.04	6.1.2 or higher	
415	LOD	3/15/05		6.1	6.1.2 or higher	
510/515	LOD	3/15/05		6.1	6.1.2 or higher	
1100/1150	LOD	3/15/05		6.1	6.1.2 or higher	
2100	LOD	3/15/05		6.1	6.1.2 or higher	
2150	LOD	3/15/05		6.1	6.1.2 or higher	
25a	MAINTENANCE	8/31/02		5.2.1	6.1.2 or higher (6.1 upgrade requires min. 512 MB RAM) Not eligible to upgrade to v7.0	
25b	MAINTENANCE	3/31/04		6.0	6.1.2 or higher Not eligible to upgrade to v7.0	
100	MAINTENANCE	3/31/04		6.0	6.1.2 or higher 6.0 EOL as of 2/1/06	
250	MAINTENANCE	3/31/04		6.0	6.1.2 or higher Not eligible to upgrade to v7.0	
1000a	MAINTENANCE	12/31/02		5.2.1	6.1.2 or higher (6.1 upgrade requires min. 512 MB RAM) Not eligible to upgrade to v7.0	
1000b	MAINTENANCE	9/30/03		6.0	6.1.2 or higher Not eligible to upgrade to v7.0	
1000c	MAINTENANCE	3/31/04		6.0	6.1.2 or higher Not eligible to upgrade to v7.0	
2000a	MAINTENANCE	9/30/03		6.0	6.1.2 or higher Not eligible to upgrade to v7.0	
2000b	MAINTENANCE	3/31/04		6.0	6.1.2 or higher Not eligible to upgrade to v7.0	
4000	MAINTENANCE	3/31/04		6.0	6.1.2 or higher Not eligible to upgrade to v7.0	

Sidewinder® (G2) - Appliance Software

Version	Status	LOD date	EOL date	Comments
7.0.0	ACTIVE			v7.0 is not available for Sidewinder G2 Enterprise Manager
6.1.2	MAINTENANCE	12/31/2007	12/31/2009	
6.1.1.x	EOL	3/31/06	4/30/08	Upgrade to v6.1.2 or if eligible v7.0.0
6.1.0.x	MAINTENANCE	6/30/05	9/30/07	
6.0.x	EOL	6/30/04	2/1/06	
5.2.1	EOL	3/31/03	12/31/04	-

Sidewinder and Sidewinder G2 patches are available here >>

Sidewinder Anti-Spam Add-On Module

Version	Status	LOD date	EOL date	Comments
All versions	MAINTENANCE	12/31/2007	12/31/2008	Subscription may be renewed only through 12/31/2008 via the pro-rated price.

TrustedSource™, Secure Computing's proactive reputation-based security technology is now bundled for FREE with Sidewinder v7 in 2008.

Sidewinder SoftRemote Add-On Module

Version	Status	LOD date	EOL date	Comments
All versions	MAINTENANCE	12/31/2007	12/31/2008	Support may be renewed only through 12/31/2008 via the pro-rated price.

The SoftRemote IPsec VPN Client can now be purchased directly through SafeNet. See URL: <http://www.safenet-inc.com/softremote/index.asp>

CommandCenter - Appliance Hardware

Model	Status	LOD date	EOL date	Original release	Compatible & Supported versions
CC500	ACTIVE			4.0	4.0 or higher
CC1500	ACTIVE			4.0	4.0 or higher
CC2500	ACTIVE			4.0	4.0 or higher
CC2800	ACTIVE			4.0	4.0 or higher

CommandCenter - Appliance Software

Version	Status	LOD date	EOL date	Comments
4.0	ACTIVE			This product replaces Global Command Center for Sidewinder and Sidewinder Enterprise Manager. v4.0 is not available for SnapGear.

CommandCenter patches are available here >>

SecurityReporter - Software

Version	Status	LOD date	EOL date	Compatible & Supported versions
4.6.4	ACTIVE			Sidewinder v7.0 or higher, and Sidewinder G2 v6.1.1 or higher
4.6.3	MAINTENANCE	09/30/2007		Sidewinder v7.0 or higher, and Sidewinder G2 v6.1.1 or higher
4.2.30	MAINTENANCE	5/21/07		Sidewinder G2 v6.1.0.05 or higher
4.2.29	EOL	8/21/06	5/21/07	Sidewinder G2 v6.1.2 or higher

Sidewinder G2® Enterprise Manager - Appliance Hardware

Note: Sidewinder G2 Enterprise Manager is being replaced by "Secure Firewall CommandCenter", please inquire about upgrade options.

Model	Status	LOD date	EOL date	Original release	Compatible & Supported versions
10 D	LOD	12/31/07		6.1.2.02	6.1.2.02 or higher
25 D	LOD	12/31/07		6.1.2.02	6.1.2.02 or higher
50 D	LOD	12/31/07		6.1.2.02	6.1.2.02 or higher

UL D	LOD	12/31/07		6.1.2.02	6.1.2.02 or higher
10 C	LOD	12/31/06		6.1.1.01	6.1.1.01 or higher
25 C	LOD	12/31/06		6.1.0.05	6.1.0.05 or higher
50 C	LOD	12/31/06		6.1.0.05	6.1.0.05 or higher
UL C	LOD	12/31/06		6.1.0.05	6.1.0.05 or higher
10	LOD	6/30/05		6.1	6.1 or higher
25	LOD	3/15/05		6.1	6.1 or higher
50	LOD	3/15/05		6.1	6.1 or higher
UL	LOD	3/15/05		6.1	6.1 or higher

Sidewinder and Sidewinder G2 patches are available here >>

Sidewinder G2® Enterprise Manager - Appliance Software

Note: Sidewinder G2 Enterprise Manager is being replaced by "Secure Firewall CommandCenter", please inquire about upgrade options.

Version	Status	LOD date	EOL date	Comments
6.1.2	LOD	12/31/07	12/31/09	
6.1.1.x	MAINTENANCE	3/31/06	4/30/08	
6.1.0.x	EOL	6/30/05	3/31/07	
6.0.x	EOL	6/30/04	2/1/06	
5.2.1	EOL	3/31/03	12/31/04	

CyberGuard "Classic" Appliances

- All Classic software releases were EOL on December 31, 2007, however some Classic appliances can continue to be used (if they are eligible) and also make the upgrade to TSP or Sidewinder v7.0 software. Please check with your Secure Computing account manager or channel partner for more information about eligibility and upgrade options.
- Last Order Dates are represented as "while quantities last."
- Fulfillment will transition to replacement models if possible.
- When inventory depletion is complete the model will no longer be available for sale (Sold Out).

Model	Status	LOD date	EOL date	Original release	Compatible & Supported versions	Replacement Model
FS300	LOD	12/31/06		Classic v5.2	Classic v5.2	None
FS600	LOD	12/31/06		Classic v5.2	Classic v5.2	None
KS1000	LOD	12/31/06		Classic v5.2	Classic v5.2	KS1000-J
KS1500	LOD	12/31/06		Classic v5.2	Classic v5.2	KS1500-J
KS1500R	Sold Out	2/17/06		Classic v5.2	Classic v5.2	None
SL3200	Sold Out	2/17/06		Classic v5.2	Classic v5.2	None
KS1000J	LOD	12/31/06		Classic v5.2	Classic v5.2	None
KS1500J	LOD	12/31/06		Classic v5.2	Classic v5.2	None

CyberGuard Classic Appliance - Software

Version	Status	LOD date	EOL date	Comments
Classic (all versions)	EOL	12/31/06	12/31/07	EOL occurred on 12/31/07

CyberGuard "TSP" Appliances

- TSP units will move to the Secure Computing common appliance platforms.

- Last Order Dates are represented as "while quantities last."
- When inventory is depleted, fulfillment will transition to replacement models.
- NO EOL dates have been announced for the TSP line.

Model	Status	LOD date	EOL date	Original release	Compatible & Supported versions	Replacement Model
TSP 110 D	LOD	12/31/07		v6.4.1	v6.4.1 & higher	
TSP 210 D	LOD	12/31/07		v6.4.1	v6.4.1 & higher	
TSP 410 D	LOD	12/31/07		v6.4.1	v6.4.1 & higher	
TSP 510 D	LOD	12/31/07		v6.4.1	v6.4.1 & higher	
TSP 1100 D	LOD	12/31/07		v6.4.1	v6.4.1 & higher	
TSP 2100 D	LOD	12/31/07		v6.4.1	v6.4.1 & higher	
TSP 2150 D	LOD	12/31/07		v6.4.1	v6.4.1 & higher	
TSP 4150 D	LOD	12/31/07		v6.4.1	v6.4.1 & higher	
TSP 7300	LOD	12/31/06		v6.4	v6.4 & higher	
TSP 7100	LOD	12/31/06		v6.4	v6.2 & higher	TSP 7300
TSP 5100	Sold Out	2/17/06		v6.2	v6.2 & higher	TSP 3450-J
TSP 3600	Sold Out	2/17/06		v6.2	v6.2 & higher	TSP 3450-J
TSP 3400	LOD	12/31/06		v6.2	v6.2 & higher	TSP 3400-J
TSP 3100	LOD	12/31/06		v6.2	v6.2 & higher	TSP 3100-J
TSP 1150	LOD	12/31/06		v6.2	v6.2 & higher	TSP 410 D
TSP 1250	LOD	12/31/06		v6.2	v6.2 & higher	TSP 510 D
TSP 3100-J	LOD	12/31/06		v6.2	v6.2 & higher	TSP 1100 D
TSP 3400-J	LOD	12/31/06		v6.2	v6.2 & higher	TSP 1100 D
TSP 3450-J	LOD	12/31/06		v6.4	v6.2 & higher	TSP 2150 D
TSP 7100	LOD	12/31/06		v6.2	v6.2 & higher	TSP 4150 D

CyberGuard TSP Appliance - Software

Version	Status	LOD date	EOL date	Comments
6.4.x	MAINTENANCE	12/31/07	12/31/09	
6.3.0	MAINTENANCE		12/31/08	Note: 6.3 was a restricted release and will EOL with 6.2.
6.2.x	MAINTENANCE		12/31/08	
6.1.3	EOL		7/2005	
6.1.2	EOL		4/2005	
6.1.1	EOL		12/2004	

SnapGear® Product List

Model	Status	LOD date	EOL date	Current SW version	Comments
SG720	ACTIVE			3.1.5u3	
SG710+	MAINTENANCE	12/2006	12/2008	3.1.5u3	
SG710	MAINTENANCE	12/2006	12/2008	3.1.5u3	
SG640	ACTIVE			3.1.5u3	
SG635	MAINTENANCE	12/2006	12/2008	3.1.5u3	
SG580	ACTIVE			3.1.5u3	
SG565	ACTIVE			3.1.5u3	

SG560	ACTIVE			3.1.5u3	
SG300	ACTIVE			3.1.5u3	
SG630	EOL	12/2005	12/2007	3.1.5u3	
SG575	EOL	06/2005	06/2007	3.1.5u3	
SG570	EOL	06/2005	06/2007	3.1.5u3	
SG550	EOL	06/2005	06/2007	3.1.5u3	
SG530	EOL	06/2005	06/2007	3.1.5u3	
Lite2+	EOL	12/2004	12/2006	1.8.10	
Lite2	EOL	12/2004	12/2006	1.8.10	

Gauntlet software

Version	Status	LOD date	EOL date
6.0	EOL	10/15/03	12/31/04
5.5	EOL		12/31/03
5.0	EOL		7/31/03

e-ppliance Gauntlet (all models)

Version	Status	LOD date	EOL date
2.0	EOL	10/15/03	12/31/04
1.5	EOL		12/31/03
1.0	EOL		7/31/03

Gauntlet patches are available here >>

Global Command Center - Software

Version	Status	LOD date	EOL date	Comments
3.2.x	MAINTENANCE	3/31/08	12/31/09	After 12/31/2007, available only with orders of 50+ SnapGear units and 1 year of Support.
3.2.0	EOL		3/1/08	
3.1	EOL		12/31/07	
3.0	EOL		6/1/07	
2.5.2	EOL		10/31/05	
2.5.1	EOL		3/31/05	
2.5	EOL		11/30/04	
2.0	EOL		6/30/04	

- Global Command Center (GCC) and Sidewinder G2 Enterprise Manager (EM) will be replaced by CommandCenter 4.0 appliance.
- Between now and the end of 2009 GCC and EM customers will migrate from Sidewinder G2 and TSP to Sidewinder 7.0, which is centrally managed by CommandCenter 4.0. For roadmap details please contact your account manager or channel partner.

Web Gateway Security

Webwasher Web Gateway Security Appliance

Model	Status	LOD date	EOL date	Supported OS
WW2900C	Active			Proprietary
WW1900C	Active			Proprietary
WW1100C	Active			Proprietary
WW500C	Active			Proprietary
SME250C	Active			Proprietary
WW2900B	Maintenance	12/2007		Proprietary
WW1900B	Maintenance	12/2007		Proprietary
WW1100B	Maintenance	12/2007		Proprietary
WW500B	Maintenance	12/2007		Proprietary
SME250B	Maintenance	12/2007		Proprietary
SME250	Maintenance	8/2007	8/2012	Proprietary
WW1900	Maintenance	6/2007	6/2012	Proprietary
WW1100	Maintenance	6/2007	6/2012	Proprietary
WW500	Maintenance	6/2007	6/2012	Proprietary
WW1000	LOD	12/2006	3/2010	Proprietary

Webwasher Product List

Software/version	Status	LOD date	EOL date	Supported platforms
Webwasher 6.7	Active			Debian 3.1 & 4.0, RHES 4.0 & 5.0, Solaris 9 & 10, SLES 9.0 & 10.0, WIN 2003
Webwasher 6.6 † ¹	Maintenance	4/2008	12/2008	Debian 3.1 & 4.0, RHES 3.0 & 4.0, Solaris 8 ² , 9 & 10, SLES 8.0 ² & 9.0, WIN 2002 & 2003
Webwasher 6.5 † ¹	Maintenance	9/2007	6/2008	Debian 3.1 & 4.0, RHES 3.0 & 4.0, Solaris 8 ² , 9 & 10, SLES 8.0 ² & 9.0, WIN 2002 & 2003
Webwasher 6.0 † ¹	EOL	3/2007	12/2007	Debian 3.1, RHES 3.0 or 4.0, Solaris 8, 9 or 10, SLES 8.0 or 9.0, WIN 2000 or 2003
Webwasher 5.3 † ¹	Maintenance	12/2006	12/2009	Debian 3.1, RHES 3.0 or 4.0, SLES 8.0 ² or 9.0, Solaris 8 ² or 9, WIN 2000 ² or 2003
Webwasher 5.2 [#]	EOL	11/2005	12/2006	Debian 3.0 or 3.1, RHES 3.0, SLES 8.0 or 9.0, Solaris 8 or 9, WIN 2000 or 2003
Content Reporter 4.7 †*	Active			RHEL 4.0, SLES 9, Solaris 8 or 9 *, WIN 2000 or 2003. Support database versions: Oracle 8.1.7, Oracle 9i, or 10g, Microsoft SQL 2000 or 2005, MaxDB 7.5 (included)
Content Reporter 4.6 †	EOL	12/2006	06/2007	WIN 2000 or 2003, Linux, Solaris 7, 8 or 9. Support database versions: Oracle 8.1.7, Oracle 9i, Oracle 10g, Microsoft SQL 2000, MaxDB 7.5 (included)
Content Reporter 4.5	EOL	11/2005	12/2006	WIN 2000 or 2003, Solaris 7, 8 or 9. Support database versions: Oracle 8.1.7, Oracle 9i, Oracle 10g, Microsoft SQL 2000, MaxDB 7.5 (included)
Instant Messenger Filter 4.2 †	Active			WIN 2000 or 2003

Instant Messenger Filter 4.0	EOL	11/2005	01/2008	WIN 2000 or 2003
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McAfee no longer provides Anti-Virus signature updates for WW v5.2 or older effective 1/31/2007

¹ For Computer Associates eTrust Anti-Virus module: LOD defined as of 9/2007 and EOL defined as of 12/2008

² EOL for this platform defined as of 12/2007

* Content Reporter is only supported on Solaris 64 bit OS

† Webwasher has not been tested on, and does not currently support 64-bit OS editions or hardware

SmartFilter Product List

Software/version	Status	LOD date	EOL date	Supported OS or application platforms
SmartFilter 3.x.x	EOL	7/2004	9/2006	Win 2000, RHL 7.2, RHL 9.0, Solaris 2.6 or 8
SmartFilter 4.0.x	EOL	9/2005	9/2007	Win 2000, Win 2003, RHL 7.3, RHL 9.0, Red Hat ES 3.0, Solaris 8 or 9
SmartFilter 4.1.x	LOD	06/2007	06/2008	Win 2000, Win 2003, Win XP Pro, RHL 9.0, Red Hat ES 3.0 or 4.0, Solaris 8 or 9
SmartFilter 4.1.1.02 - Cisco CE	LOD	06/2007	04/2008	
SmartFilter 4.1.1.01 - UFP (FW-1)	LOD	06/2007	06/2008	
SmartFilter 4.1.1.01 - Volera (IFP)	LOD	06/2007	06/2008	
SmartFilter 4.1.1.02 - Sidewinder 6.1.x	LOD	06/2007	12/2009	
SmartFilter 4.2.x	ACTIVE			Win 2000, Win 2003, Win XP Pro, Win Vista, Red Hat ES 3.0/4.0/5.0, Solaris 8/9/10
SmartFilter DA 4.0.x	Active			RHL 7.3, Red Hat ES 3.0 or 4.0
SmartFilter Control List SDK 3.x	EOL	09/2003	09/2006	Various OEM Platforms
SmartFilter Control List SDK 4.0.x	EOL	04/2004	04/2006	Various OEM Platforms
SmartFilter Control List SDK 4.1.x	EOL	05/2005	05/2007	Various OEM Platforms
SmartFilter Control List SDK 4.2.x	LOD	01/2007	01/2009	Various OEM Platforms
SmartFilter Control List SDK 4.3.x	Active			Various OEM Platforms
SmartFilter IFP SDK 2.0.x	Active			Various OEM Platforms
SmartFilter IFP SDK 3.0.x	Active			Various OEM Platforms
SmartFilter CSP SDK 4.0.x	Active			Various OEM Platforms

Internet Database of Categorized Content

Software/version	Status	LOD date	EOL date	Supported OS
SmartFilter database				
SmartFilter 4.x XL	Active			
SmartFilter 4.x SL	Active			

SmartFilter 4.x NS	Active			
SmartFilter 3.x 3P	LOD	07/2004	12/2008	
SmartFilter 3.x 3S	LOD	07/2004	12/2008	
SmartFilter 3.x 3W	EOL	07/2004	09/2006	
SmartFilter 3.x 3M	EOL	07/2004	09/2006	
Webwasher 6.x XL	Active			
Webwasher 5.x WL	LOD	12/2006	12/2009	
Webwasher 5.x WS	Active	12/2006	12/2009	
Webwasher 5.x WD	Active	12/2006	12/2009	
N2H2 database				
N2 2 Digest	EOL	09/2005	09/2007	
N2 Novell ICS	EOL	09/2005	09/2006	
N2 i2100 3 & 4	EOL	09/2005	09/2006	
N2 i2100 catserver	EOL	09/2005	09/2006	
N2 1 digest	EOL	09/2005	09/2006	

N2H2 Bess and Sentian Product List

Software/version	Status	LOD date	EOL date	Supported OS or application platforms
Bess i2100 Managed Service 4.0	EOL	10/2002	09/2006	Proprietary
Bess@/Sentian™ 3.5	EOL	09/2005	09/2006	WIN 2003, WIN 2000
Bess/Sentian 2.5	EOL	09/2005	09/2006	RHL 7.2 or 7.3, RHEL 2.1

ZIX Product List

See Webwasher Web Inspector above

Software/version	Status	LOD date	EOL date	Supported OS
ZIX Message Inspector	EOL	3/2005	12/2006	Windows
ZIX Web Inspector	EOL	3/2005	12/2006	Windows

Messaging Products

Hardware and Software Lifecycles

Status	HW Models	LOD date	EOL date
Active	Generation 4 S10D, S120, E2200, E5200		
Active	Generation 3 S10B, S25B, S50B, S100B, E2000A, E2000B, E2000C, E3000A, E3000B*, E5000A, E5000B, C10000A, C10000B	3/31/2008**	6/30/2011
Discontinued	Generation 2 S10A, S25A, S50A, S100A(112)	6/30/2006	1/1/2009
	Generation 2		

Discontinued	305, 345, 345A, 345B, 345X	1/1/2005	1/1/2009
Discontinued	Generation 1 110,210	1/1/2004	2/19/2007

* The E3000 appliance will remain "Active" past the LOD and EOL date and will be subject to different discontinue dates.

** While supplies last.

Status	SW Version	LOD date	EOL date
Active	IronMail 6.7.x, CMC 2.7.x, Edge 2.7.x*, Encryption 6.7.x*		
Active	IronMail 6.5.x, CMC 2.5.x, Edge 2.1.x, Encryption Push/Pull	06/2008	
Maintenance	IronMail 6.1.x & 5.x, CMC 2.1.x	09/2006	07/2008
EOL	IronMail 4.1.x, CMC 1.5.x	01/2006	05/2006

* Edge 2.7.x and Encryption 6.7.x are future releases.

S10B Server Last Order Date Announcement

110/210 Server End of Life Announcement

Patches and upgrades >>

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EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FINJAN SOFTWARE, LTD., an Israel)	
corporation,)	
)	
Plaintiff-counterdefendants,)	Civil Action No. 06-00369-GMS
)	
v.)	
)	
SECURE COMPUTING CORPORATION, a)	
Delaware corporation; CYBERGUARD)	
CORPORATION, a Delaware corporation,)	
WEBWASHER AG, a German corporation and)	
DOES 1 THROUGH 100,)	
)	
Defendants-counterclaimants.)	

DECLARATION OF CARL DEGEN

I, CARL DEGEN, declare:

1. I am President of Christensen Associates, an economic research and consulting firm located in Madison, Wisconsin. I am an economist. I make this declaration based upon personal knowledge.

2. I understand that Finjan Software, Ltd. ("Finjan") is seeking prejudgment interest on the jury's March 12, 2008, verdict in the above case. I also understand that Finjan is requesting that the prejudgment interest be calculated at the prime rate, compounded quarterly.

3. I have reviewed Finjan Software, Ltd.'s Exhibit P to its Opening Brief in Support of its Post-Trial Motion to Amend Judgment and for an Accounting of Sales, which is Finjan's table of its prejudgment interest calculations.

4. Finjan's calculation overstates the interest. It assumes that \$9.18 million would be a lump sum payment, paid on the first day of alleged infringement in 2004. Neither I nor Finjan's damages expert, Mr. Russell Parr, opined that a lump-sum, up-front payment was

appropriate in this case. Instead, both Mr. Parr and I opined regarding a royalty as a percentage of sales. Therefore, an interest calculation based on a lump-sum payment, as Finjan has done in Exhibit P, is not appropriate in this case. Under Finjan's calculation, Finjan would receive substantial interest on payments before they would have been due. Finjan's prejudgment interest calculation in Exhibit P is incorrect because it should assume ongoing royalty payments each quarter. A corrected calculation of interest using the prime rate, compounded quarterly, is attached as Ex. A.

5. In my experience, prejudgment interest is most commonly calculated using the Treasury rate with annual compounding. A correct calculation of interest using the one-year Treasury Constant Maturity Rate, compounded annually, is attached as Ex. B.

To the best of my knowledge and belief, I declare, under penalty of perjury, that all the statements made by me are true.

Dated: May 9, 2008



Carl G. Degen

Exhibit A
Correction of Finjan's Proposed Prejudgment Interest Calculation
(Prime Rate Compounded Quarterly)

Webwasher Software Sales

	2004 Q4	2005 Q1	2005 Q2	2005 Q3	2005 Q4	2006 Q1	2006 Q2	2006 Q3	2006 Q4	2007 Q1	2007 Q2	2007 Q3	2007 Q4	2008 thru April	TOTAL
Interest Base ¹	\$0	\$580,982	\$1,067,907	\$1,737,081	\$2,296,317	\$2,845,618	\$3,289,902	\$4,125,082	\$5,063,652	\$6,271,490	\$7,167,136	\$8,149,515	\$8,725,922	\$8,885,605	
Annual Interest Rate ²		5.44%	5.91%	6.43%	6.97%	7.43%	7.90%	8.25%	8.25%	8.25%	8.25%	8.18%	7.52%	5.97%	
Prejudgment Interest ³	\$0	\$7,745	\$15,449	\$27,261	\$38,990	\$51,445	\$63,135	\$82,568	\$101,354	\$125,530	\$143,457	\$161,712	\$159,683	\$173,417	
Royalty Base ⁴	\$3,631,136	\$2,994,873	\$4,085,788	\$3,324,843	\$3,189,446	\$2,455,242	\$4,825,283	\$5,350,016	\$6,915,520	\$4,813,226	\$5,243,262	\$2,591,843			\$1,151,746
Royalty Paid @ end of quarter ⁵	\$580,982	\$479,180	\$653,726	\$531,975	\$510,311	\$392,839	\$772,045	\$856,003	\$1,106,483	\$770,116	\$838,922	\$414,695			

Webwasher Hardware Sales

	2004 Q4	2005 Q1	2005 Q2	2005 Q3	2005 Q4	2006 Q1	2006 Q2	2006 Q3	2006 Q4	2007 Q1	2007 Q2	2007 Q3	2007 Q4	2008 thru April	TOTAL
Interest Base ¹															
Annual Interest Rate ²															
Prejudgment Interest ³															
Royalty Base ⁴															
Royalty Paid @ end of quarter ⁵															\$22,152

TSP Appliance Sales

	2004 Q4	2005 Q1	2005 Q2	2005 Q3	2005 Q4	2006 Q1	2006 Q2	2006 Q3	2006 Q4	2007 Q1	2007 Q2	2007 Q3	2007 Q4	2008 thru April	TOTAL
Interest Base ¹															
Annual Interest Rate ²															
Prejudgment Interest ³															
Royalty Base ⁴															
Royalty Paid @ end of quarter ⁵															\$217,049

1 Cumulative "Royalty Paid" and "Prejudgment Interest." Equals the sum of the prior quarter's "Interest Base," "Prejudgment Interest," and "Royalty Paid @ end of quarter."

2 Average of monthly prime rates for the quarter reported by the Federal Reserve at http://www.federalreserve.gov/releases/h15/data/Monthly/H15_PRIME_NA.txt.

3 Equals "Interest Base" multiplied by [(1 plus "Annual Interest Rate"^(1/4))] minus "Interest Base." To calculate interest through April 2008, the exponent is (1/3) instead of (1/4) to account for the extra month of interest.

4 Accrued sales revenue relied on by the jury.

5 "Royalty Base" multiplied by 16 percent for Webwasher Software Sales or multiplied by 8 percent for Webwasher Hardware Sales and TSP Appliance Sales.

GRAND TOTAL PREJUDGMENT INTEREST
 Finjan's proposed interest
 Difference

\$1,390,947
 \$2,306,100
 \$915,153

Exhibit B
Calculation of Prejudgment Interest Through April 2008
(1-Year Treasury Constant Maturity)

Webwasher Software Sales

	2004	2005	2006	2007	Thru April 2008	Total
Interest Base ¹		\$580,982	\$2,777,196	\$6,041,551	\$8,338,462	
Annual Interest Rate ²		3.62%	4.93%	4.52%	2.01%	
Prejudgment Interest ³		\$21,022	\$136,985	\$273,179	\$55,498	<u>\$486,683</u>
Royalty Base ⁴	\$3,631,136	\$13,594,950	\$19,546,061	\$12,648,331		
Royalty Paid @ end of year ⁵	\$580,982	\$2,175,192	\$3,127,370	\$2,023,733		

Webwasher Hardware Sales

	2004	2005	2006	2007	Thru April 2008	Total
Interest Base ¹				\$99,025	\$264,034	
Annual Interest Rate ²				4.52%	2.01%	
Prejudgment Interest ³				\$4,478	\$1,757	<u>\$6,235</u>
Royalty Base ⁴			\$1,237,810	\$2,006,651		
Royalty Paid @ end of year ⁵			\$99,025	\$160,532		

TSP Appliance Sales

	2004	2005	2006	2007	Thru April 2008	Total
Interest Base ¹			\$784,000	\$1,118,671	\$1,169,253	
Annual Interest Rate ²			4.93%	4.52%	2.01%	
Prejudgment Interest ³			\$38,671	\$50,583	\$7,782	<u>\$97,035</u>
Royalty Base ⁴		\$9,800,000	\$3,700,000			
Royalty Paid @ end of year ⁵		\$784,000	\$296,000			

GRAND TOTAL PREJUDGMENT INTEREST \$589,954

1 Cumulative "Royalty Paid" and "Prejudgment Interest " Equals the sum of the prior quarter's "Interest Base," "Prejudgment Interest," and "Royalty Paid @ end of year "

2 Annual average of monthly interest rates for U.S. Treasury securities at 1-year constant maturity reported by the Federal Reserve at http://www.federalreserve.gov/releases/h15/data/Monthly/H15_TCMNOM_Y1.txt

3 Equals "Interest Base" multiplied by (1 plus "Annual Interest Rate") minus "Interest Base " To calculate interest through April 2008, (1 plus "Annual Interest Rate") is raised to the (1/3) to account for the less than full year time period

4 Accused sales revenue relied on by the jury

5 "Royalty Base" multiplied by 16 percent for Webwasher Software Sales or multiplied by 8 percent for Webwasher Hardware Sales and TSP Appliance Sales